



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
SR-6J

VIA ELECTRONIC AND CERTIFIED MAIL

April 30, 2019

Mr. Michael Peterson
Waste Management
Closed Sites Management Group
W124N9355 Boundary Road
Menominee Falls, WI 53051

Subject: Comments on *H.O.D. Landfill Institutional Control Plan and Environmental Covenant*;
H.O.D. Landfill Superfund Site, Lake County, Antioch, IL (EPA ID#: ILD980605836)

Dear Mr. Peterson:

The United States Environmental Protection Agency (EPA), in consultation with the Illinois Environmental Protection Agency (IEPA), has conducted a review of the draft *H.O.D. Landfill Institutional Control Plan (IC Plan) and Environmental Covenant* for the HOD Landfill Superfund Site (Site) in Antioch, Illinois as well as the draft environmental covenant that was previously submitted under an older model. EPA recently provided Waste Management Inc. of Illinois (WMII) a copy of an October 2018 Illinois Uniform Environmental Covenants Act (UECA) model covenant. However, that model covenant was updated again in March 2019. The most recent model covenant is dated March 27, 2019 and is attached to this comment letter.

Attached with this letter is also a copy of EPA's 2012 Institutional Control Implementation and Assurance Plan Guidance and examples of IC Maps to assist with your revision of the IC Plan and environmental covenant. The IC Plan and environmental covenant are standalone documents; therefore, please submit both documents concurrently to EPA and IEPA within 30 days following receipt of this letter (by May 30, 2019).

General Comments on the IC Plan and Environmental Covenant:

1. Legal Descriptions; Additional Site Maps of Restricted Area and Contaminated Groundwater Plume: Maps are required which specifically delineate the 7 parcels discussed in the title commitment and the areas of residual contamination. Provide the following in the revised IC Plan:
 - A map that identifies the current boundaries of the restricted areas, groundwater contaminant plume, groundwater flow direction, boundaries of the Site, property ownership, streets, easements, encumbrances, and assessor's parcel number or other recorded plat or survey information.

- Evaluate whether the proposed institutional controls cover the entire area that needs to be restricted, including the contaminated groundwater plume.
- A legal description of each restricted area prepared according to current ALTA Survey guidelines.
- Geographic Information System (GIS) coordinates (accuracy of at least 0.01 of a foot) that show the current boundaries of restricted areas, boundaries of the Site, utility easements and other encumbrances. Please provide certification from a licensed surveyor that coordinates are accurate within 0.01 of a foot. Please format the coordinates of the restricted areas and boundaries into an ESRI polygon shape file. The shape file shall be projected into the UTM, NAD 83 projection system. Provide an attribute name in the shape file for each polygon submitted (e.g. site boundary, industrial, landfill cap).
- Clarification on the number of parcels to be restricted. In this respect, the title work for the Site indicates it consists of 7 parcels, but EPA requires clarification on where those are and whether the legal description in the UECA model covenant covers the entire area of the landfill and off-site location(s). Some information in the draft UECA model covenant and draft IC Plan refers only to 6 parcels.
- Proposal for use restrictions for areas outside the fill area, Part of the land is outside of the landfill. Besides the restrictions on the landfill, it would be prudent to restrict that land to commercial/industrial uses and restrict groundwater usage. Also, long-term stewardship (LTS) is still needed for long-term protectiveness.
- Clarification of affected acreage. Regarding the Site maps, page 1, Description of Site in the Draft IC Plan - does the “site” refer to the 121-acre, the 51-acre, the old landfill, the new landfill or combination of both landfills?
- Clarification of the areas to be restricted. The Appendix-A Site Map is an accurate map of the area. Drawn on the map is “====” which illustrates the approximate limits of landfill area. Does this delineate the area to be restricted? Additionally, this appears to include 51 acres. What delineates the 121-acre area? Also, please note that this 51-acre area includes both the old landfill and the new landfill.
- EPA reviewed two Illinois Tax property ID maps. Tax ID Numbers and the Parcel descriptions match the Appendix-A Map. However, the anti427.pdf shows a small 1.19-acre parcel with Tax ID number 02-09-300-011 that is not included in the “Site” description. Note that this missing 1.19 acre is in the very middle of the Appendix-A map and is included in the “====” area.
- The Environmental Covenant identifies the “Grantor” as the Village of Antioch, and WMII as the Grantor/Holder. However, switching back to the property description and the so-called “Site,” only 3 parcels are owned by Antioch, while the other 3 parcels are owned by WMII. Again, this goes back to the definition of the “Site.” Which area is the “Site” covered by in the environmental covenants?
- Who owns the 7th parcel identified in the legal descriptions in the title work?

- An overlay of the restricted property on GIS maps.
2. Title Commitment: Please review the encumbrances and confirm that they do not impact the remedy. Accordingly, WMII and the Village of Antioch should either attempt to subordinate conflicting easements or provide the easement and leaseholders with a copy of the procedures necessary to protect the remedy. Additionally, because the current Title Commitment was done in 2010, it is now outdated, and we request a 2019 Title Commitment to be submitted.
 3. Communications Plan and Review/Revision of Operation and Maintenance (O&M) Plan for Long-Term Stewardship: EPA requires that a communications plan be included for continued long-term effectiveness of institutional controls (ICs) at the Site. This is necessary to ensure that lines of communication are clear for IC monitoring, maintenance and enforcement. In addition, frequent review of the O&M should continue. EPA and IEPA may determine that a revision is required, if necessary.
 4. For practical purposes, EPA and IEPA need to know whether there an arrangement between WMII and the Village, whereby counsel (Lisa Zebovitz of Neal, Gerber & Eisenberg, at the time) had approval to recommend the draft Village covenant for the Village's signature and recording? If not, can this be carried out?
 5. Does the Village have ongoing legal representation, so that we can re-visit the issue of the ordinance's effectiveness? As worded, it does not necessarily prohibit the installation of private wells within the Village's limits.
 6. The information regarding "prepared by" and "return this instrument to" needs to be updated, as does the reference to "2010" in the first paragraph for WMII's and the Village of Antioch's draft covenants.
 7. In paragraph 3 of WMII's environmental covenant, there is no reference to the Village as a "Grantee" whereas in the Village's proposed covenant, there is a reference to WMII as holder and grantee – was the exclusion deliberate?
 8. Paragraph 5. B's description of the status of remedial action in both draft covenants for WMII and the Village Antioch should be clarified – instead of being "fully implemented" (11th line) the remedy "is being implemented." Modify the following sentence to read "Institutional controls necessary for long-term protectiveness are currently being implemented" or merge this into the preceding sentence. Also, reference can be made to the Third Five Year Review (EPA, 2015) in the last two sentences, for clarity.
 9. WMII's and Village of Antioch's Draft Environmental Covenant, Paragraph 7: What is the purpose of the language "solely as they relate to the ROD remedy"?
 10. Paragraph 8. A of WMII's and Village of Antioch's Draft Environmental Covenant: Add "described" after "ROD Remedy" and add to the end, "and any amendments or modifications thereto that U.S. EPA or its successor agency shall approve." – or similar language to preserve the concept that amendments etc. may prompt the need for access.

11. Paragraph 8. D of WMII's and Village of Antioch's Draft Environmental Covenant: Introduce same concept as above in comment 11 and delete the semicolon.

Specific Comments:

1. Referencing Page 2, Section II and Exhibit 2: The Village of Antioch Code Sections 8-1-1 and 8-2-3-1 do not prohibit installation or use of potable wells within the village of Antioch. The codes require owners of property "abutting on the public waterworks and sewerage system" to connect structures to the system. The boundaries of the codes are not provided in the draft ICP, so it is not possible to determine whether it would affect properties near the landfill. Nothing was presented to delineate the off-site extent of groundwater contamination and the mechanism to prevent potential exposure to that groundwater through potable well use. The environmental covenant can effectively prohibit groundwater use on the landfill property, but it cannot prohibit its use on other properties. That requires properly executed deed restrictions on adjacent properties, where necessary. The Village of Antioch must provide documentation for an institutional control that prevents installation and use of potable wells within the area impacted by contaminated groundwater. However, EPA and Illinois EPA request that groundwater use restrictions be placed in the covenants themselves. Reliance upon an ordinance alone is not enough. Ordinances are subject to amendment or repeal, placing the remedy at risk.

If WMII and the Village of Antioch can prove the groundwater contamination is limited to the HOD/Antioch property, then the language in the covenant will suffice. Otherwise, it is recommended that the Village of Antioch sign a Memorandum of Understanding (MOU) with IEPA or look into utilizing the [Lake County Permitting Ordinance](#) to adopt a model groundwater ordinance that will address this issue as required in the 1998 Record of Decision (ROD).

Waste Management must provide EPA and IEPA a copy of the groundwater ordinances referenced, along with a Geographic Information Systems (GIS) map that illustrates the areas affected by the groundwater ordinances. The groundwater ordinances are not among those approved by IEPA. As described in the paragraph above, EPA and IEPA have not seen where the boundaries of the ordinances are in relation to the contaminant plume adjacent to the landfill, so it is not possible to discern whether they would pertain to properties affected by the contamination.

2. Referencing Exhibit 1, Exhibit 5 Appendix A, and Exhibit 6 Appendix A: The figure (Figure 3) used in all three sections shows Site conditions before the remedy was implemented. It does not show all the property. Figures must show current Site conditions (conditions that are to be protected by the covenant), and they must show the entire property. The Tax ID Numbers should be included on figures to better delineate ownership. A better-quality image is also required.
3. Exhibit 5 (WMII covenant), Section 2. A. Property: It is not obvious which parcels this covenant pertains to. All parcels are listed (those owned by WMII and those owned by

Antioch). Reference is made to legal descriptions in Appendix B. A cross reference is needed between the parcels identified by the Tax ID Numbers listed in this section and the parcel numbers in the legal descriptions in Appendix B. The parcels owned by Antioch can be listed to complete the record, but they should be listed at the end of the paragraph with a clarifying statement as to why they are included. The section needs a clarifying statement that this covenant pertains to the parcels owned by WMII.

4. Exhibit 5 (WMII covenant), Section 7. Activity and Use Limitations:
 - a. **Restricted groundwater use:** Per EPA's request, WMII has recently provided information regarding the extent of off-site groundwater contamination and that is being reviewed by EPA and IEPA. EPA is also aware that H.O.D. Landfill has/had a National Pollution Discharge Elimination System (NPDES) Permit to discharge pollutants that meet regulatory standards into Silver Lake. Please provide an update on and/or a copy of the Site's NPDES Permit and contact information for the regulatory agency delegated responsibility for managing this Clean Water Act Program. The groundwater data in the 2005, 2010 and 2015 five-year reviews indicate the VOC contaminant vinyl chlorinated exceed the EPA drinking water standard maximum contaminant level (MCL) at well US-03D, located off-site at the property boundary and outside the fence. Any IC must prevent exposure to groundwater contamination on-site and off-site.
 - b. **No interference with the Remedy:** This language is useful to protect the ROD remedy but too generic for personal protection. More specific language needs to be added to indicate that any excavation at the Site that penetrates the cap must be done under an OSHA-compliant safety plan, any wastes excavated must be replaced beneath the cap or disposed of properly off-site, and the cap must be restored to the specifications contained in the ROD remedy.
5. Exhibit 5 (WMII covenant), Section 17.C: More legible copies of the documents in Appendix C are needed.
6. Exhibit 5 (WMII covenant): Remove the headers on the first page so that all that space is left blank for the Recorder's office without text.
7. Exhibit 5 (WMII covenant): Page 1, Paragraph 1: change 2010 to 2019.
8. Exhibit 5 (WMII covenant), Page 3, Paragraph 5D: delete "Gary King, Chief, Bureau of Land, #24" and replace with "FOIA Officer."
9. Exhibit 5 (WMII covenant), Page 4, Paragraph 11A: Change "Kane County" to "Lake County."
10. Exhibit 5 (WMII covenant), Page 6, Paragraph 15: Add this language to the end of the paragraph: "If Grantor no longer owns the Property at the time of proposed amendment

- or termination, Grantor waives the right to consent to an amendment or termination of the Environmental Covenant.”
11. Exhibit 5 (WMII covenant), Page 7, Paragraph 18B, second line: delete the word “grant” and replace it with “establishment of activity and use limitation that run with the land.” (This is a change made to the model in January 2018).
 12. Exhibit 5 (WMII covenant), Page 9: add the County in the SS and change 2010 to 2019.
 13. Exhibit 5 (WMII covenant), Page 10: insert “Sangamon” as the county in the SS block and delete “a delegate of.”
 14. Exhibit 5 (WMII covenant), Page 4, Paragraph 11: insert “Lake” as the county in the SS block.
 15. Exhibit 5 (WMII covenant), Page 5, Paragraph 12B: The last clause of the paragraph may be redundant.
 16. Exhibit 5 (WMII covenant), Page 5, Paragraph 12C: Elsewhere ownership is identified as being in fee, and Illinois’s current model uses that term here. Is there a reason it wasn’t used here?
 17. Exhibit 6 (Antioch covenant), Section 2. A. Property: comments are same as for the respective section in the WMII covenant.
 18. Exhibit 6 (Antioch covenant), Section 7 Activity and Use Limitations: comments are same as for the respective section in the WMII covenant.
 19. Exhibit 6 (Antioch covenant): Remove the headers on the first page so that all that space is left blank for the Recorder’s office without text.
 20. Exhibit 6 (Antioch covenant), Page 1, Paragraph 1: change 2010 to 2019.
 21. Exhibit 6 (Antioch covenant), Page 2, Paragraph 2. B: correct the mailing address to reflect that of the Village of Antioch. Replace with the correct address identified in Paragraph 3. B (e.g., 874 Main Street, Antioch, IL 60002).
 22. Exhibit 6 (Antioch covenant), Page 3, paragraph 5. D: delete “Gary King, Chief, Bureau of Land, #24” and replace with “FOIA Officer.”
 23. Exhibit 6 (Antioch covenant), Page 4, Paragraph 11. A: Change “Kane County” to “Lake County.”
 24. Exhibit 6 (Antioch covenant), Page 5, Paragraph 12. B: The last clause of the paragraph may be redundant.

25. Exhibit 6 (Antioch covenant), Page 5, Paragraph 12.C: Elsewhere ownership is identified as being in fee, and Illinois's current model uses that term here. Is there a reason it wasn't used here?
26. Exhibit 6 (Antioch covenant), Page 6, Paragraph 15: The language "current owner of the fee simple of the property" is consistent with the IL boilerplate but there may be a word missing, i.e., "current owner of the fee simple *interest* of the property." Or, "current owner in fee of the property."
27. Exhibit 6 (Antioch covenant), Page 6, Paragraph 16: Should notices still go to Lisa S. Zebovitz? Also, IEPA's current model covenant specifies that notices go to the UECA attorney in the Division of Legal Counsel.
28. Exhibit 6 (Antioch covenant), Page 7, Paragraph 17. B: Again, "fee" concept is omitted. Also, "owner" is capitalized here and in 17. C, but the term is not defined (note that IEPA's 2014 model covenant is to same effect).
29. Exhibit 6 (Antioch covenant), Page 7, Paragraph 18: IEPA's model covenant has a paragraph requiring compliance reporting; this must stay in.
30. Exhibit 6 (Antioch covenant), Page 7, Paragraph 18. B: second line—delete the word "grant" and replace it with "establishment of activity and use limitation that run with the land." (This is a change made to the model in April 2014).
31. Exhibit 6 (Antioch covenant), Page 9: add the County in the SS and change 2010 to 2019.
32. Exhibit 6 (Antioch covenant), Page 10: insert "Sangamon" as the county in the SS block and delete "a delegate of."
33. Exhibit 6 (Antioch covenant), Page 11: insert "Cook" as the county in the SS block.
34. Exhibit 6 (Antioch covenant), Page 12: insert county in the SS block and change the 2010 to 2019.

If you have any questions regarding the comments, please contact me at (312) 886-6150 or e-mail: mason-smith.karen@epa.gov, or have your counsel contact Thomas Williams, Associate Regional Counsel at (312) 886-0814 or email: williams.thomas@epa.gov.

Sincerely,

Karen Mason-Smith

Karen Mason-Smith/**signed**/
Remedial Project Manager
Superfund Division

Enclosures

cc: M. Shaw, K. Geving - IEPA

T. Williams, N. DiCosmo - EPA